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**International Court
of Justice**

THE HAGUE

**Cour internationale
de Justice**

LA HAYE

YEAR 2003

Public sitting

held on Friday 21 February 2003, at 10 a.m., at the Peace Palace,

President Shi presiding,

*in the case concerning Oil Platforms
(Islamic Republic of Iran v. United States of America)*

VERBATIM RECORD

ANNÉE 2003

Audience publique

tenue le vendredi 21 février 2003, à 10 heures, au Palais de la Paix,

sous la présidence de M. Shi, président,

*en l'affaire des Plates-formes pétrolières
(République islamique d'Iran c. Etats-Unis d'Amérique)*

COMPTE RENDU

Present: President Shi
 Vice-President Ranjeva
 Judges Guillaume
 Koroma
 Vereshchetin
 Higgins
 Parra-Aranguren
 Kooijmans
 Rezek
 Al-Khasawneh
 Buergenthal
 Elaraby
 Owada
 Simma
 Tomka
 Judge *ad hoc* Rigaux
 Registrar Couvreur

Présents : M. Shi, président
M. Ranjeva, vice-président
MM. Guillaume
Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buergenthal
Elaraby
Owada
Simma
Tomka, juges
M. Rigaux, juge *ad hoc*
M. Couvreur, greffier

The Government of the Islamic Republic of Iran is represented by:

Mr. M. H. Zahedin-Labbaf, Agent of the Islamic Republic of Iran to the Iran-US Claims Tribunal, Deputy Director for Legal Affairs, Bureau of International Legal Services of the Islamic Republic of Iran, The Hague,

as Agent;

Mr. D. Momtaz, Professor of International Law, Tehran University, member of the International Law Commission, Associate, Institute of International Law,

Mr. S. M. Zeinoddin, Head of Legal Affairs, National Iranian Oil Company,

Mr. Michael Bothe, Professor of Public Law, Johann Wolfgang Goethe University of Frankfurt-am-Main, Head of Research Unit, Peace Research Institute, Frankfurt,

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the English and Australian Bars, member of the Institute of International Law,

Mr. Alain Pellet, Professor at the University of Paris X-Nanterre, member and former Chairman of the International Law Commission,

Mr. Rodman R. Bundy, avocat à la cour d'appel de Paris, member of the New York Bar, Frere Cholmeley/Eversheds, Paris,

Mr. David S. Sellers, avocat à la cour d'appel de Paris, Solicitor of the Supreme Court of England and Wales, Frere Cholmeley/Eversheds, Paris,

as Counsel and Advocates;

Mr. M. Mashkour, Deputy Director for Legal Affairs, Bureau of International Legal Services of the Islamic Republic of Iran,

Mr. M. A. Movahed, Senior Legal Adviser, National Iranian Oil Company,

Mr. R. Badri Ahari, Legal Adviser, Bureau of International Legal Services of the Islamic Republic of Iran, Tehran,

Mr. A. Beizaei, Legal Adviser, Bureau of International Legal Services of the Islamic Republic of Iran, Paris,

Ms Nanette Pilkington, avocat à la cour d'appel de Paris, Frere Cholmeley/Eversheds, Paris,

Mr. William Thomas, Solicitor of the Supreme Court of England and Wales, Frere Cholmeley/Eversheds, Paris,

Mr. Leopold von Carlowitz, Research Fellow, Peace Research Institute, Frankfurt,

Mr. Mathias Forteau, docteur en droit, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris X-Nanterre,

as Counsel;

Le Gouvernement de la République islamique d'Iran est représenté par :

M. M. H. Zahedin-Labbaf, agent de la République islamique d'Iran auprès du Tribunal des réclamations Etats-Unis/Iran, directeur adjoint des affaires juridiques au bureau des services juridiques internationaux de la République islamique d'Iran à La Haye,

comme agent;

M. D. Momtaz, professeur de droit international à l'Université de Téhéran, membre de la Commission du droit international, associé à l'Institut de droit international,

M. S. M. Zeinoddin, chef du service juridique de la National Iranian Oil Company,

M. Michael Bothe, professeur de droit public à l'Université Johann Wolfgang Goethe de Francfort-sur-le-Main, directeur de la recherche à l'Institut de recherche pour la paix à Francfort,

M. James R. Crawford, S.C., F.B.A., professeur de droit international, titulaire de la chaire Whewell à l'Université de Cambridge, membre des barreaux d'Angleterre et d'Australie, membre de l'Institut de droit international,

M. Alain Pellet, professeur à l'Université de Paris X-Nanterre, membre et ancien président de la Commission du droit international,

M. Rodman R. Bundy, avocat à la cour d'appel de Paris, membre du barreau de New York, cabinet Frere Cholmeley/Eversheds, Paris,

M. David S. Sellers, avocat à la cour d'appel de Paris, Solicitor auprès de la Cour suprême d'Angleterre et du Pays de Galles, cabinet Frere Cholmeley/Eversheds, Paris,

comme conseils et avocats;

M. M. Mashkour, directeur adjoint des affaires juridiques au bureau des services juridiques internationaux de la République islamique d'Iran,

M. M. A. Movahed, conseiller juridique principal à la National Iranian Oil Company,

M. R. Badri Ahari, conseiller juridique au bureau des services juridiques internationaux de la République islamique d'Iran, Téhéran,

M. A. Beizaei, conseiller juridique au bureau des services juridiques internationaux de la République islamique d'Iran, Paris,

Mme Nanette Pilkington, avocat à la cour d'appel de Paris, cabinet Frere Cholmeley/Eversheds, Paris,

M. William Thomas, Solicitor auprès de la Cour suprême d'Angleterre et du Pays de Galles, cabinet Frere Cholmeley/Eversheds, Paris,

M. Leopold von Carlowitz, chargé de recherche à l'Institut de recherche pour la paix à Francfort,

M. Mathias Forteau, docteur en droit, chercheur au Centre de droit international de Nanterre (CEDIN) de l'Université de Paris X-Nanterre,

comme conseils;

Mr. Robert C. Rizzutti, Vice-President, Cartographic Operations, International Mapping Associates,

as Technical Adviser.

The Government of the United States of America is represented by:

Mr. William H. Taft, IV, Legal Adviser, United States Department of State,

as Agent;

Mr. Ronald J. Bettauer, Deputy Legal Adviser, United States Department of State,

as Co-Agent;

Mr. Michael J. Matheson, Professor, George Washington University School of Law,

Mr. D. Stephen Mathias, Assistant Legal Adviser for United Nations Affairs, United States Department of State,

Mr. Michael J. Mattler, Attorney-Adviser, United States Department of State,

Mr. Sean Murphy, Professor, George Washington University School of Law,

Mr. Ronald D. Neubauer, Associate Deputy General Counsel, United States Department of Defence,

Mr. Prosper Weil, Professor Emeritus, University of Paris II, member of the Institut de droit international, member of the Académie des sciences morales et politiques (Institut de France),

as Counsel and Advocates;

Mr. Paul Beaver, Defence & Maritime Affairs Consultant, Ashbourne Beaver Associates, Ltd., London,

Mr. John Moore, Senior Associate, C & O Resources, Washington, D.C.,

as Advocates;

Mr. Clifton M. Johnson, Legal Counsellor, United States Embassy, The Hague,

Mr. David A. Kaye, Deputy Legal Counsellor, United States Embassy, The Hague,

Ms Kathleen Milton, Attorney-Adviser, United States Department of State,

as Counsel;

Ms Marianne Hata, United States Department of State,

Ms Cécile Jouglet, United States Embassy, Paris,

Ms Joanne Nelligan, United States Department of State,

M. Robert C. Rizzutti, vice-président des opérations cartographiques, International Mapping Associates,

comme conseiller technique.

Le Gouvernement des Etats-Unis d'Amérique est représenté par :

M. William H. Taft, IV, conseiller juridique du département d'Etat des Etats-Unis,

comme agent;

M. Ronald J. Bettauer, conseiller juridique adjoint du département d'Etat des Etats-Unis,

comme coagent;

M. Michael J. Matheson, professeur à la faculté de droit de l'Université George Washington,

M. D. Stephen Mathias, directeur chargé des questions concernant les Nations Unies auprès du conseiller juridique du département d'Etat des Etats-Unis,

M. Michael J. Mattler, avocat-conseiller au département d'Etat des Etats-Unis,

M. Sean Murphy, professeur à la faculté de droit de l'Université George Washington,

M. Ronald D. Neubauer, assistant au bureau du conseiller juridique adjoint du département de la défense des Etats-Unis,

M. Prosper Weil, professeur émérite à l'Université de Paris II, membre de l'Institut de droit international, membre de l'Académie des sciences morales et politiques (Institut de France),

comme conseils et avocats;

M. Paul Beaver, expert consultant en questions de défense et affaires maritimes, *Ashbourne Beaver Associates, Ltd.*, Londres,

M. John Moore, associé principal, *C & O Resources*, Washington D. C.,

comme avocats;

M. Clifton M. Johnson, conseiller juridique à l'ambassade des Etats-Unis à La Haye,

M. David A. Kaye, conseiller juridique adjoint à l'ambassade des Etats-Unis à La Haye,

Mme Kathleen Milton, avocat-conseiller au département d'Etat des Etats-Unis,

comme conseils;

Mme Marianna Hata, département d'Etat des Etats-Unis,

Mme Cécile Jouglet, ambassade des Etats-Unis à Paris,

Mme Joanne Nelligan, département d'Etat des Etats-Unis,

Ms Aileen Robinson, United States Department of State,

Ms Laura Romain, United States Embassy, The Hague,

as Administrative Staff.

Mme Aileen Robinson, département d'Etat des Etats-Unis,

Mme Laura Romains, ambassade des Etats-Unis à La Haye,

comme personnel administratif.

The PRESIDENT: Please be seated. This session is open. The Court meets today to hear the first round of oral argument of the United States of America. The United States will take the floor this morning and then on Monday 24 February at 3 p.m; on Tuesday 25 February at 10 a.m. and on Wednesday 26 February at 10 a.m. and 3 p.m. Thus, I shall now give the floor to H.E. Mr. William Taft IV, Agent of the United States of America.

Mr. TAFT:

1. INTRODUCTORY STATEMENT

1.1. Thank you, Mr. President. It is an honour to appear before this Court as the Agent of the United States of America. Mr. President, first, I want to congratulate you on your re-election to the Court and your recent election as the Court's President. I would also like to congratulate Judge Koroma on his re-election to the Court and Judges Owada, Simma, and Tomka on their elections; and I would also like to congratulate Judge Ranjeva on his election as the Vice-President of the Court. I would also, before starting, like to express my sympathy to Iran on the recent aeroplane crash accident earlier this week. We extend our sympathies to the members of the families and to Iran on that unhappy event.

1.2. Mr. President, Members of the Court, this Court, the principal judicial organ of the United Nations, enjoys a unique position in the international system. States have confidence in the Court, so much so that they frequently agree in advance to submit certain types of disputes to it for decision in the event they are unable to resolve them. The Court, in its turn, earns the confidence of States and their submission to its jurisdiction by the integrity of its proceedings. In this regard, the Court has a special responsibility to ensure that States do not abuse this forum by seeking, through the presentation of carefully constructed but ill-founded arguments, either its endorsement of conduct that is plainly wrong or its condemnation of conduct that is clearly necessary and, in fact, effective in stopping wrongful conduct.

1.3. Mr. President, Members of the Court, Iran proposes to use the Court in this proceeding to produce a perverse result. It asks the Court to find that a treaty intended to promote commercial relations between Iran and the United States required the United States to sit by while, over the course of more than three years, Iran carried out a campaign of unlawful attacks on United States

and other neutral shipping engaged in lawful commerce in international waters. The Court should not allow itself to be taken down a path that leads to such a shameful conclusion. Nor is this necessary. As we will demonstrate in the upcoming days, Iran's positions in this case are without factual or legal merit, and, indeed, in some cases are so clearly wrong as to appear wholly disingenuous. They must be rejected.

1.4. In our presentation today and next week, the United States will be spending perhaps more time than is usual in reviewing for the Court the facts in evidence underlying this case. This is necessary not because the matters at hand are complicated, but rather because the story Iran has offered this Court is woefully incomplete and, in many material respects, false.

1.5. The gaps in Iran's factual account are significant.

1.6 . Iran did not tell you that in the three years prior to the United States action that is the subject of its Application, it launched a systematic assault on neutral shipping in the Gulf, killing at least 63 sailors, injuring many more and causing hundreds of millions of dollars in damage. It is an indisputable fact that it did so.

1.7. Iran did not tell you that its attacks were condemned by the United Nations Security Council, by the Arab League, by the Gulf Co-operation Council, and by Governments around the world. The record is overflowing with such condemnations, including some in Iran's own submissions of evidence.

1.8. Nor did Iran tell you about the repeated diplomatic efforts by the United States and other Governments to persuade Iran to cease its attacks. But the record is similarly replete with such efforts, as well as with Iran's repeated rejection of them.

1.9. In addition to these gaps, Iran's account contains a number of troubling false statements.

1.10. Iran has denied that it engaged in surreptitious minelaying activities affecting commercial shipping in the Gulf. In fact, Iran's extensive laying of mines in international shipping channels in the Gulf was known throughout the international shipping community and was observed by eyewitnesses. The United States actually captured an Iranian boat, the *Iran Ajr*, and its crew in the act of laying mines.

1.11. Iran has told you that it lacked the capacity to launch the missiles that struck two United States vessels in Kuwait's harbour. In fact, eyewitness accounts and photographic evidence make clear that Iran did launch these missiles.

1.12. Iran told you that its offshore oil platforms were benign commercial installations and involved in no offensive military functions. In fact, eyewitness accounts and Iran's own documents establish that these platforms were part of Iran's military operations structure and that Iran used them to launch and co-ordinate its attacks on United States and other neutral shipping.

1.13. Mr. President, during the course of the United States presentation, we will fill in the gaps and correct the false statements in the story Iran has placed before the Court. In the end, the Court will see that the story of this case is very simple: Iran's relentless attacks on United States and other neutral shipping harmed essential United States security interests and made necessary the actions the United States took against Iran's oil platforms — actions which themselves had no effect on commerce between Iran and the United States. These factual issues are important because they carry with them the inescapable legal conclusions that the actions of the United States in no way violated its obligations under the 1955 Treaty on which Iran bases its claims in this case.

1.14. Let me summarize the position of the United States and the course of our presentation.

1.15. We start with the fact that the Persian Gulf was one of the world's most critical economic lifelines during the period 1984-1988. The Gulf region supplied 25 per cent of the world's oil and contained nearly two thirds of the world's petroleum reserves. While there were a small number of pipelines running to the Mediterranean or the Red Sea, the Gulf itself was the vital channel through which this oil flowed to the world economy. As a result, the economic stability and security of virtually all States around the world was affected by any disruptions in shipments of crude oil through the Gulf.

1.16. The G-7 nations — Canada, France, Germany, Italy, Japan, the United Kingdom and the United States — underscored this point in June 1987. They adopted a statement which "reaffirm[ed] that the principle of free navigation in the gulf is of paramount importance for us and for others and must be upheld" (Exhibit 232). By attacking shipping in the Gulf, Iran was attacking the economic security of countries around the world. It also intended, of course, to pressure third

countries, particularly Kuwait and Saudi Arabia, into refraining from lawful economic relations with Iraq, with which country Iran was at war.

1.17. Iran's unlawful attacks on neutral shipping in the international waters of the Gulf during the relevant period must be viewed in this context. While Iran was at war with Iraq at this time, it was not at war with Iraq's neighbours or with the many countries whose ships transited the Gulf. Specifically, and most importantly, Iran was not at war with the United States. Nor was the United States at war with Iran.

1.18. Citing various statements by United States officials, Iran has implied that because at times the United States (together with many other States) believed that Iran's attacks on neutral shipping during the Iran-Iraq war were more dangerous than Iraq's were, the operations against the platforms should be viewed as reflecting a general United States policy of hostility toward Iran, rather than — what they were — particular actions to protect specific essential security interests of the United States. In fact, however, it is quite clear from the record of the case that, whatever its general policy goals may have been regarding the war, at no point did the United States use force to achieve them. To the contrary, the United States conducted itself in strict conformity with its status as a neutral non-combatant with regard to Iran throughout the war. This is why, for example, the United States arranged for the return of the members of the crew of the *Iran Ajr* to Iran after it had detained them.

1.19. As for what the United States policy regarding the war actually was, it is simply stated and well known. The United States supported the position of the United Nations Security Council throughout, in particular in 1980, when the Security Council called on Iran and Iraq to refrain from the use of force at the time of Iraq's original invasion of Iran (United Nations Security Council resolution 479 (1980)); again, in 1984, when the Security Council condemned Iranian attacks on shipping in the Gulf (United Nations Security Council resolution 552 (1984)); and again, in 1987, when the Security Council called for a ceasefire, withdrawal of both sides' forces from occupied territory, and a peaceful settlement (United Nations Security Council resolution 598 (1987)). While it supported the first United Nations Security Council resolution to which I have referred in 1980, Iran rejected the second and the third. To that extent, Iran's and the United States policies on

the war certainly differed. But the United States did not use force against Iran in support of its policy goals during the eight long years of the Iran-Iraq war.

1.20. The United States did, however, use force in the two operations against the Iranian oil platforms in 1987 and 1988, as well as in one other instance, when it stopped the *Iran Ajr* while it was laying mines in international shipping lanes. Why the difference? The reason is self-evident. In these three distinct operations the United States was not concerned with general policy or the fortunes of Iran and Iraq in their war. It was protecting its own essential security interests against Iranian attacks. The operations against the platforms in particular had nothing to do with Iran's war against Iraq and everything to do with Iran's attacks on neutral shipping in the Gulf and, specifically, the attacks on United States ships that preceded them.

1.21. There are, of course, lawful and appropriate steps that a belligerent State may take with respect to neutral shipping to ensure, for example, that military supplies do not reach its enemy. While Iran has referred to its right to take these steps, it neglected to say that it did not actually take them in most cases. Instead, Iran pursued what can only be described as an illegal war on neutral shipping in the international waters of the Gulf region, carried out, with the help of intelligence and logistical support from its oil platforms, by aircraft, by helicopters and gunboats, by mines and by missiles. Altogether, there were over 200 Iranian attacks between 1984 and 1988, on average about one a week. These attacks were responsible for at least 63 persons being killed and many more injured before they were stopped shortly after the second operation against Iran's oil platforms by the United States. Many nations bore these human and monetary costs. Shipping sources concluded that Iran carried out its attacks on vessels so as to maximize injuries and deaths to sailors on these mostly commercial vessels.

1.22. This Iranian war, Mr. President, against neutral shipping in the Gulf was not accepted by the international community. Many multilateral and bilateral diplomatic initiatives were undertaken in an effort to stop Iran's attacks. The Security Council, the League of Arab States, and the Gulf Co-operation Council all condemned Iran's attacks, and many States protested Iran's attacks through diplomatic channels. In addition, many States acted directly to address Iran's attacks, using their military capabilities defensively to protect commercial shipping. Belgium, France, Germany, Italy, the Netherlands, the Soviet Union, the United Kingdom, and the

United States sent warships and demining vessels to the Gulf. The United States and the United Kingdom reflagged Kuwaiti tankers, and the Soviet Union chartered oil tankers to Kuwait in a further effort to protect oil trade with Kuwait from Iran's attacks. But none of these steps ended Iran's unlawful attacks in the international waters of the Gulf. In fact, over time, during the period I am speaking of, the unlawful attacks intensified.

1.23. Even before Iran began targeting United States ships for attack in July 1987, Iran's actions endangered essential United States security interests. Top United States officials made clear their concerns about this at the time. In May 1987, President Reagan spoke about "the vital interests of the American people that are at stake in the Persian Gulf". Recalling that the Middle East crisis of the mid-1970s created "enormous dislocation that shook our economy to its foundations", President Reagan noted that these same effects could result if "Iran was allowed to block the free passage of neutral shipping" in the Gulf (Exhibit 230). Around the same time, United States Secretary of Defence Caspar Weinberger issued a report emphasizing that the "vital" United States interests in freedom of navigation and the free flow of oil from the Gulf were important essential security interests (Exhibit 231).

1.24. But the damage Iran's actions caused to United States interests increased beginning in July 1987 when Iran began to target specifically United States naval vessels and United States commercial shipping interests in the Gulf. Iran's attacks seriously injured a number of United States seamen, caused very severe damage to United States ships and cargo, and caused United States shippers to take costly steps to avoid further attacks. The United States sought repeatedly through diplomatic notes sent to Iran to persuade it to cease these attacks. There were, in fact, five such notes between May and September 1987. But Iran rebuffed these approaches just as it rebuffed the many similar pleas made by other countries.

1.25. Having exhausted all other means of deterring further Iranian attacks, the United States ultimately took necessary and proportionate military actions against Iran's oil platforms in the Gulf, platforms that Iran had been using in targeting and attacking neutral shipping. In each case, notice was given to personnel on the platforms in advance of the attacks, in order to minimize injuries or loss of life. After the notice was provided, United States troops took steps to ensure that the platforms would not continue to be used by Iran's military to target and attack neutral shipping.

The United States promptly reported these actions to the United Nations Security Council, consistent with the United Nations Charter.

1.26. Following the second United States action in April 1988, Iran's attacks on neutral shipping dramatically declined and soon stopped. The record suggests that the United States measures against Iran's platforms played a significant part in bringing about this result. The United States actions helped make it possible for international shipping to again transit the Gulf without threat of Iranian attack. The security interests of the United States and the many other States that depended on a reliable and affordable supply of oil from the Gulf were thus protected.

1.27. Notably, unlike in the case of Iran's unlawful attacks on neutral shipping in the Gulf, the United Nations Security Council did not issue a condemnation of the United States actions, nor did any other multilateral forum do so.

1.28. Mr. President, Members of the Court, the 1955 Treaty between Iran and the United States cannot be interpreted to establish as wrongful the limited but effective steps taken by the United States to bring to an end Iran's programme of unlawful attacks on neutral shipping in the international waters of the Gulf. Nor does international law permit Iran, citing the Treaty, to turn to this Court to attain relief for the consequences of its own unlawful conduct, which was so broadly condemned by the international community.

1.29. The United States submits that, as a matter of law, Iran is not entitled to the judgment it seeks. We submit, first, that the Court should, pursuant to fundamental principles of international law reflected in the Court's own jurisprudence, deny Iran the relief it seeks because Iran's own conduct, including its breach of its obligations under Article X of the 1955 Treaty, itself made necessary the United States conduct that is the subject of this case.

1.30. Second, we submit that Iran's claim should be denied because Iran has not shown that the United States actions in fact had any effect on freedom of commerce between the territories of Iran and the United States — that is, it did not violate Article X, paragraph 1, of the Treaty. By contrast, the United States will show that Iran's actions in attacking neutral vessels did violate Article X, paragraph 1, and that, of course, is the basis for our counter-claim.

1.31. Third, we submit that United States actions against the Iranian oil platforms did not violate the Treaty because Article XX, paragraph 1, of the Treaty specifically and expressly

provides that the Treaty shall not preclude the application of measures necessary to protect the essential security interests of a party. The operations against the platforms were such measures.

1.32. We shall be discussing this “essential security interests” provision at some length. In particular, we shall show that the essential security interests of the United States were threatened by Iran’s attacks on United States and other neutral shipping in the Persian Gulf. We shall also show that the United States actions against Iran’s oil platforms in particular were necessary to protect its essential security interests in light of Iran’s use of those platforms to support its military attacks.

1.33. Counsel for Iran have suggested a number of reasons why Article XX does not apply to the actions taken by the United States in respect of the oil platforms. We shall address them all in due course, but it is important at the outset to address one that goes to the heart of the Court’s consideration of this case — that is, the limited nature of its jurisdiction to review and decide disputes between the Parties. According to Iran’s view, which would import into Article XX the provisions of general international law with respect to the use of force and the right of self-defence, the Court cannot find that United States actions against the platforms are consistent with the terms of the Treaty, unless it first decides that they were consistent with general international law.

1.34. This interpretation of Article XX, paragraph 1, is wrong. There can be no doubt that under Article XX, paragraph 1, certain measures are permitted. If measures were taken in circumstances in which they were necessary to protect the essential security interests of a party, that is the end of the story. Such measures are lawful under the terms of the Treaty, and there is no need to consider general international law. The law of the Treaty and general international law are two wholly different matters.

1.35. Under Iran’s interpretation, Article XX would be read to require that measures potentially within its scope be first subjected to review for compliance with obligations that are not part of the Treaty. Such an interpretation would turn the idea of the clause on its head, since it would require that the conduct in question not be excepted from review but instead be subjected to an even more comprehensive review.

1.36. Mr. President, Members of the Court, the United States stresses this point not because of any concern about the appropriateness of its actions under general international law. Our actions were consistent with our obligations under international law and a proper exercise of our right of

self-defence. We stress the point because the Parties have specially confided to this Court's jurisdiction only certain issues, namely the scope of their obligations under the Treaty. This point directly affects the relationship between the United States and Iran, on the one hand, and this Court on the other. The United States and Iran consented in Article XXI, paragraph 2, of the Treaty to the jurisdiction of this Court with respect to any dispute as to the interpretation or application of the Treaty. They did not consent — either in the Treaty or elsewhere — to the jurisdiction of this Court to consider issues between them arising under general international law. For the Court to provide itself with such jurisdiction in the manner proposed by Iran would be inconsistent with the requirement that its jurisdiction be based on the consent of both of the Parties before it, not just one of them.

1.37. Mr. President, Members of the Court, the oral presentation of the United States will proceed as follows. For the remainder of this morning's session and during the next session of the Court on Monday afternoon, counsel and advocates for the United States shall discuss the facts of this case. First, the Court will hear from Mr. Paul Beaver, who will review the material in the record setting out the scope and scale of Iran's campaign of attacks, the means by which Iran carried them out, and the clear understanding within the international shipping community of Iran's responsibility for such attacks. Next, we will focus on events that took place prior to 19 October 1987, the date of the first United States actions against Iran's oil platforms. Mr. Stephen Mathias of the United States Department of State will describe Iran's responsibility for a series of mine attacks against United States shipping beginning in mid-1987. Following Mr. Mathias, the Court will hear from Mr. Ronald Neubauer of the United States Department of Defence, and from Mr. John Moore. They will explain for the Court the evidence establishing Iran's responsibility for missile attacks on two United States vessels in October 1987. I will wrap up the presentation today.

1.38. At the next sitting of the Court on Monday afternoon, we will begin with a presentation by Mr. Michael Mattler of the United States Department of State on the repeated diplomatic efforts of the United States to persuade Iran to cease its attacks, and the continuation of Iran's attacks in spite of these efforts. Next, the Court will hear again from Mr. Beaver, who will describe the effect of Iran's attacks on the international shipping community and the costly and extensive efforts

undertaken by shippers to avoid Iran's attacks. Mr. Ronald Bettauer of the United States Department of State, and the Co-Agent of the United States in this case, will then set out the evidence demonstrating Iran's use of its oil platforms to attack shipping and the decision of the United States to target the platforms in an effort to prevent Iran from engaging in further attacks. Finally, Professor Michael Matheson will close Monday's proceedings with a summary of our factual presentation and its relationship to our legal arguments.

1.39. During the sessions of the Court on Tuesday and Wednesday morning, the United States will present its legal argument on Iran's claim. At that time, Mr. President, we will introduce the legal argument of the United States and the counsel who will present it. At the session on Wednesday afternoon, we will present the facts and legal argument on the United States counter-claim. And after that, I will conclude the United States presentation in this opening round.

1.40. Before concluding here, I would like to make one more point. We will, of course, focus in detail on the specific factual and legal issues raised by Iran's claims. But, Mr. President, the implications of this case — both for the international community and for this Court — extend far beyond the specific allegations of the Parties. Iran's attacks posed grave threats to the vital interests of States around the world and had to be stopped. The United Nations, the United States and many other States made repeated diplomatic efforts to halt Iran's unlawful attacks, but Iran was not deterred by these efforts and its attacks continued. Can it be that under these circumstances no State had the right to take the steps necessary to stop Iran's attacks? That only States that had not tried to promote their commercial relations with Iran by treaty had such a right? Such an outcome would serve only to encourage the type of aggression that the United States actions here helped put an end to.

1.41. Moreover, such an outcome would make the Court complicit in providing a shield to Iran when its own unlawful armed attacks are the entire cause of the actions of which it complains. It would be a signal to other aggressors that this Court may be available to protect them from the consequences of their wrongful conduct and to advance their cause by finding liable those who seek to stop their aggression. The Court must not allow its proceedings to be abused in this way.

1.42. Mr. President, Members of the Court, thank you for your patience and for your attention to this presentation. I ask, Mr. President, that you now call upon Mr. Beaver.

The PRESIDENT: Thank you, Mr. Taft. I now give the floor to Mr. Beaver.

Mr. BEAVER:

2. IRAN'S RESPONSIBILITY FOR ATTACKS ON SHIPPING

2.1. Thank you, Mr. President. Mr. President, distinguished Members of the Court, I am honoured to be here for the United States. My task is to review for the Court the written material and evidence submitted by the United States that establishes the general understanding within the international shipping community that Iran was responsible for attacks on neutral commercial shipping.

2.2. Mr. President, as Mr. Taft has briefly outlined, Iran engaged in a systematic and relentless campaign of attacks on United States and other neutral shipping in the Gulf during the course of its war with Iraq. Iran's responsibility for attacks on shipping using missiles, mines, and other weapons was beyond any doubt within the international shipping community. Yet during the course of these proceedings, Iran has refused to acknowledge that it engaged upon such attacks, and has at times appeared to suggest that Iraq was responsible for all such attacks. Mr. President, it is important to be entirely clear on this point: any such suggestion by Iran is absolute nonsense and completely at odds with the historical record. This is not a matter on which there is room for reasonable people to disagree. It is an indisputable fact that between 1984 and 1988 Iran conducted a systematic and devastating assault not just on vessels supporting Iraq's war effort but on neutral commercial shipping in the Gulf.

2.3. These attacks on neutral shipping were unprecedented and the likes of which had not been seen anywhere since the Second World War.

2.4. During this period, Iran attacked over 200 neutral commercial vessels in the Gulf: and, Sir, the word "neutral" is important here. Iran's attacks were not by any means confined to shipping engaged in trade with Iraq; Iran's attacks targeted trade conducted by countries — specifically Kuwait and Saudi Arabia — that were not at war with Iran. Iran did not claim to have any legal justification for these attacks. Despite Iran's frequent references to its right as a belligerent to stop and search vessels to ensure that they were not carrying contraband, this was not a factor in the great majority of these attacks. According to Lloyd's Maritime Information Service,

“The significant volume of reporting received by [its] Casualty Department regarding Iran’s attacks did not indicate that Iran targeted its attacks against vessels carrying war material destined for Iraq. It was clear that most merchant vessels were not carrying such cargo. Nor did the reporting reflect that Iran limited its attacks to vessels that resisted Iran’s attempts at visit and search; few if any vessels appeared to have been attacked for this reason.” (Exhibit 10)

(All exhibit references are to numbered exhibits in the Counter-Memorial and Counter-Claim and the Rejoinder of the United States unless otherwise noted.) In fact, Iran attacked neutral commercial ships generally and without warning.

2.5. The world’s leading shipping information services reported extensively on Iran’s attacks on neutral shipping. These included *Jane’s Defence Weekly*, *Lloyd’s List*, *Lloyd’s Weekly Casualty Reporting Service*, the International Association of Independent Tanker Owners, the General Council of British Shipping, the Norwegian Shipowners’ Association and others. The United States has provided the Court with excerpts of these services’ reporting on Iranian attacks on shipping in the annexes to its written pleadings.

2.6. These services draw on a range of reliable sources in reporting on Iran’s attacks, including reports from ships’ masters, correspondents posted along the shipping routes and in ports, shipowners, insurers, news agencies, and other sources. These services represent the most authoritative sources of reporting available about shipping conditions, and the international shipping community relies on the information they provide daily to make decisions affecting the safety of their personnel and of their ships and of their cargoes, worth billions of dollars. Their reporting reflects the universal understanding within the international shipping community that Iran was systematically attacking neutral shipping in the Gulf.

2.7. Iran’s attacks caused great damage and extensive casualties, and affected the interests of countries around the world. As the slide now on the screen indicates, Iran attacked vessels from at least 31 different neutral countries. You will see on the slide that countries from all regions were affected — for example, countries in the Americas such as the United States, Panama and the Bahamas; countries in Europe, such as the United Kingdom, France, Germany, and Russia; countries in the Middle East, such as Saudi Arabia, Kuwait and Qatar; countries in Asia, such as China, Japan and Singapore (Exhibit 9).

2.8. Iran’s attacks exacted a great human toll. Iran killed at least 63 people in its attacks, and injured at least 99 more (Exhibit 9). The victims included a number of Americans. Ten United

States sailors suffered physical injuries in Iran's mine attack against the U.S.S. *Samuel B. Roberts*. Six members of the crew of the *Sea Isle City* suffered significant injuries as a result of Iran's missile attack. The ship's captain, John Joseph Hunt, was permanently blinded and suffered a fractured skull and many broken bones. A second seaman aboard the *Sea Isle City* was also blinded (Exhibits 88 and 89).

2.9. Iran's attacks were also extremely disruptive and damaging to shipping in the Gulf. Iran's attacks inflicted great damage on ships and their cargo. They required shipping companies to take costly precautionary measures to avoid attack and to minimize the impact of attacks when they did occur. They resulted in increased insurance and danger pay rates for shipping transiting the Gulf. I will explain in detail these effects of Iran's attacks on shipping during my presentation to the Court on Monday.

Iran's methods of attacking neutral shipping

2.10. Let me turn now, Mr. President, to describing to the Court how Iran carried out its assault on shipping. Iran devoted substantial resources to its campaign of attacks, and used the full range of weapons in its military arsenal to carry it out. In doing so, Iran demonstrated the depth of its determination to impede and terrorize neutral shipping transiting the Gulf.

2.11. Iran's ability to attack neutral shipping was facilitated by its declaration in 1980 of a wartime exclusion zone, which had the effect of narrowing the channel through which shipping could transit the Gulf. Pursuant to this declaration, commercial vessels not inbound for Iranian ports were ordered to remain outside a designated area ranging from 12 to 60 nautical miles from Iran's coastline. This placed off limits the routes through the Gulf that commercial shipping had followed before the war.

2.12. Much of the southern Gulf was too shallow for outbound shipping in any case, as fully loaded tankers would risk running aground. As a result, Iran's exclusion zone served to compress neutral commercial shipping into a narrow channel, making vessels easier to locate and target.

2.13. Iran's exclusion zone also required shipping to pass near Iran's offshore oil platforms. Iran seized on this circumstance to incorporate these platforms into its military operations structure and used them to aid its attacks on shipping.

2.14. When Iran began attacking neutral shipping in 1984, it used air-to-surface missiles and rockets fired from Phantom fighter-bomber aircraft, like the one pictured here (tab 3), based on Lavan Island in the central Gulf (Exhibits 1, 2, 4). These attacks were supported by spotter aircraft that flew in sight of the targets and gave targeting information to the Phantoms.

2.15. Beginning in late 1985, Iran began using helicopters as an additional means of attacking shipping, such as the Agusta-Bell helicopter illustrated here (Exhibits 1, 2, 4; tab 4). These helicopters launched from Iran's offshore installations at Rostam Island, as well as from Abu Musa Island, and they fired on vessels using rockets, missiles and cannon (Exhibit 4).

2.16. Launching from Iran's offshore installations allowed Iran's armed helicopters to cover a wider area of the Gulf than they could have covered by operating from the Iranian mainland. Iran's use of its offshore oil platforms to mount helicopter attacks on shipping led shipping companies to devise new sailing routes through the Gulf that avoided close passage to the platforms, in an effort to minimize the risk that their ships would be attacked.

2.17. In 1987, Iran again expanded its attack methods when it began to attack ships by laying offensive sea mines and launching hit-and-run rocket-propelled grenade attacks using high-speed gunboats (Exhibits 1, 2, 4). Iran laid offshore sea mines throughout the Gulf during this period, including outside Kuwait's Al-Ahmadi terminal and near Farsi Island in the northern Gulf, off the coast of Bahrain, and near the Rostam offshore oil installation in the central Gulf, and near Khor Fakkan off the coast of the United Arab Emirates at the entrance to the Gulf (Exhibit 4). Iran's high-speed gunboats, known generically as Boghammers, launched their attacks from offshore installations at Farsi, Sirri, and Abu Musa Islands: they used automatic fire and rocket-propelled grenades to attack ships (Exhibit 4).

2.18. Iran's attack methods suggested that Iran sought to maximize the numbers of casualties caused by its attacks. Ted Hooton, Editor of *Jane's Naval Weapons Systems Yearbook*, notes that gunboats launching their attacks "would approach close to their victims in order to rake them with automatic weapon fire, usually with armour-piercing bullets, and then deliver the *coup de grâce* with a rocket" (Exhibit 4).

2.19. In attacking ships, Iran routinely fired machine guns, rocket-propelled grenades, and missiles into the accommodation quarters of the vessels where crew members were housed, rather

than targeting other areas of the ships where the crew would not be present. This practice drew specific criticism from the Government of Norway in a February 1988 protest to the Deputy Iranian Foreign Minister (Exhibit 198).

2.20. And in its survey of Iranian ship attacks, the International Association of Independent Tanker Owners observed that “the methods of assault [used by Iran in its gunboat attacks] show that the main objective of the raids are to kill sailors as an act of terrorism” (Exhibit 1).

Iran’s attacks increased over time

2.21. As Iran’s means of attacking shipping expanded, so too did the number and lethality of these attacks.

2.22. Iran launched its first attack on a neutral vessel on 13 May 1984, when it fired a missile that struck the Kuwaiti tanker *Umm Casbah* (Exhibit 9). The following day, Iran attacked two more tankers, one Kuwaiti and one Saudi Arabian. Though the United Nations Security Council condemned these Iranian attacks and demanded that they cease forthwith, Iran’s attacks continued and intensified (Exhibit 27).

2.23. Let us plot on the screen Iran’s attacks.

2.24. During 1984, Iran launched a total of 18 attacks on neutral shipping.

2.25. During 1985, Iran launched a further 16 attacks on neutral shipping.

2.26. During 1986, Iran launched 42 more attacks on neutral ships, more than it had launched in 1984 and 1985 combined. Iran’s attacks also became more lethal: according to information compiled by Lloyd’s Maritime Information Service, at least 33 people were killed and 38 more were injured by Iranian attacks on shipping during 1986 (Exhibit 9).

2.27. This upsurge in Iran’s attacks led the international community to expand its efforts to protect neutral shipping.

2.28. Now I will indicate on the screen the countries that took various forms of action to protect against Iran’s attacks. The Soviet Union, the United Kingdom, the United States, agreed to either reflag Kuwaiti tankers or to charter their own flag tankers to the Kuwait Oil Tanker Company, in response to a request from Kuwait (Exhibit 4). Contrary to Iran’s suggestion that such efforts represented a United States effort to support Iraq in its war with Iran, these were

prudent and reasonable steps taken by some of the world's leading shipping nations in response to the serious threat Iran's attacks posed to their interests.

2.29. In addition, France, the United Kingdom, Italy, Belgium, the Netherlands, Germany, the Soviet Union, and the United States all sent warships and in some cases minesweepers to the Gulf (Exhibit 204). The United States provided all United States flag vessels with a United States naval escort when transiting the Gulf. By the autumn of 1987, the total force sent to the Gulf by the international community to protect against the threat posed by Iran's attacks on shipping numbered more than 70 vessels (Exhibit 204).

2.30. Unfortunately, Mr. President, these efforts also failed to stop, or even to slow the pace of Iran's attacks.

2.31. Let me return to the slide showing Iran's attacks against tankers. During 1987, Iran attacked a further 90 ships, more than twice the number it attacked during 1986.

2.32. Iran attacked a further 48 ships in 1988, before its assault on neutral commercial shipping finally ended in July of that year. In all, Iran was responsible for a total of 214 attacks on neutral vessels between 1984 and 1988 (Exhibits 1, 2, 9).

Attacks on United States ships

2.33. Among these attacks, Iran was responsible for a series of attacks on United States ships beginning in mid-1987. The slide I have had on the screen shows all of Iran's attacks.

2.34. Let me now focus on attacks on United States shipping interests.

2.35. In July 1987, an Iranian sea mine severely damaged the United States flagged vessel *Bridgeton*, in the northern Gulf as it was sailing as part of the first United States ships to be escorted by United States naval vessels.

2.36. In August, Iran laid mines off the coast of the United Arab Emirates that resulted in the attack on the United States chartered tanker *Texaco Caribbean*.

2.37. In October, Iran initiated ground-launched missile attacks on two United States ships, the *Sungari* and the *Sea Isle City* as they were anchored outside Kuwait's Al-Ahmadi Sea Island terminal.

2.38. In November, Iranian gunboats attacked two more United States ships, the tankers *Lucy* and *Esso Freeport*.

2.39. Iran attacked three more United States vessels in 1988, launching another gunboat attack on the United States vessel *Diane*, using mines to attack the U.S.S. *Samuel B. Roberts*, and attacking the *Esso Demetia* with speed boats (Exhibits 1, 2, 9).

2.40. These attacks seriously injured United States seamen and caused tens of millions of dollars of damage to United States ships and their cargo. Many other nations suffered similar and, in some cases, even greater damage from Iran's attacks on their ships and citizens.

2.41. Mr. President, the enormous damage wrought by Iran's attacks on neutral shipping is not something the United States has dreamt up for the purposes of this case. Again, it is important to be clear on this point: Iran's attacks represented the greatest assault on neutral commercial shipping seen anywhere in the world in over a generation. They were a matter of grave concern to the international shipping community and to governments around the world. Any effort by Iran to deny or diminish its responsibility for these attacks and their devastating effects must be dismissed entirely.

2.42. Mr. President, this concludes my presentation. I ask that you now call on Mr. Stephen Mathias, who will describe for the Court Iran's responsibility for a series of sea mine attacks on United States and other neutral shipping beginning in 1987, and the damage that they caused to essential United States security interests and to the freedom of commerce and navigation.

Mr. President, Members of the Court, thank you for your attention.

The PRESIDENT: Thank you, Mr. Beaver. I now give the floor to Mr. Mathias.

Mr. MATHIAS:

3. IRAN'S RESPONSIBILITY FOR MINE ATTACKS ON UNITED STATES AND OTHER NEUTRAL SHIPPING

3.1. Thank you, Mr. President. It is an honour for me again to appear before this Court on behalf of the United States.

3.2. Mr. President, Members of the Court, as the Court has just heard, Iran's campaign of attacks on neutral shipping was of great concern to the international community from the time it

began in 1984. This concern grew during the next two years as the number of Iranian attacks increased and those attacks became more lethal. As Mr. Beaver mentioned, just a moment ago, in 1986 alone Iran killed 33 people and injured 38 more in the 42 attacks that it launched on neutral shipping.

3.3. By the beginning of 1987, the international community had grown so concerned about Iran's attacks that it began to plan efforts, including reflagging and chartering tankers and despatching naval vessels to the Gulf, to protect neutral shipping from further Iranian attacks. Iran met these efforts with defiance, including by initiating an additional method of attacking ships. While Iran's pre-1987 attacks were launched from fighter-bomber aircraft, helicopters, and gunboats, beginning in 1987 Iran began attacking ships by laying mines in shipping lanes in the Gulf.

3.4. During the course of my presentation, I will review for the Court the evidence showing Iran's responsibility for a series of mine attacks on United States and other neutral shipping during 1987. These attacks killed and injured sailors and caused enormous damage to ships and their cargo. They demonstrated that Iran's determination to attack neutral shipping was undiminished by the international community's protests and other efforts to protect shipping. Indeed, the Court will see that Iran focused its attacks on vessels participating in international protective efforts, further escalating its confrontation with the international community.

Iranian mine attacks

3.5. Mr. President, Members of the Court, let me begin by outlining the series of mine attacks on neutral shipping launched by Iran during 1987. As I speak, the location of each attack will be indicated on the map on the screen behind me. The map also appears in the judges' folder at tab 12.

3.6. On 16 May 1987, the Soviet oil tanker *Marshal Chuikov*, struck an Iranian mine near the deep water entrance to Kuwait's Al-Ahmadi port. At the time, *Marshal Chuikov* was chartered to the Kuwaiti Oil Company and sailing its first voyage as part of the international effort to protect neutral shipping engaged in trade with Kuwait from Iranian attack. The Iranian mine blew a large hole in the vessel's bottom. It was towed to Al-Ahmadi and then proceeded to Bahrain for repairs

(Exhibit 9). (All exhibit references are to numbered exhibits in the Counter-Memorial and Counter-Claim and Rejoinder of the United States unless otherwise noted.)

3.7. On 24 July 1987, the United States-flag vessel *Bridgeton* struck an Iranian mine in the international shipping channel near Iran's Farsi Island, a known base for Iranian forces, and a location in which Iraqi forces did not operate. At the time, *Bridgeton* was sailing as part of the first convoy of United States flagged vessels transiting the Gulf under escort of United States naval vessels as part of Operation Earnest Will. The Iranian mine ripped a 9 mm by 3 mm hole in *Bridgeton's* hull, necessitating 150 tons of steel repair (Exhibits 9 and 46).

3.8. On 10 August 1987 the United States-chartered tanker *Texaco Caribbean* struck an Iranian mine in the vicinity of the Khor Fakkan Anchorage, off the coast of Fujayrah. The mine blew a 4 mm hole in the ship's hull and caused the spillage of 57,000 barrels of light crude oil into the Gulf of Oman (Exhibits 9 and 211).

3.9. On 15 August 1987 the United Arab Emirates (UAE) flag supply vessel *Anita* struck an Iranian mine also in the vicinity of Khor Fakkan. The damage from the mine blast caused *Anita* to sink. Six crewmembers were killed in that attack, and five more were injured (Exhibit 9).

3.10. On 21 September 1987 an Iranian naval vessel, *Iran Ajr*, was observed by United States forces while its crew was in the process of laying mines in international waters off the coast of Bahrain. United States forces seized the vessel and its cache of mines. They detonated in place the mines Iranian forces had already laid. I will discuss the *Iran Ajr* in greater detail later in this presentation.

Iran's responsibility for mine attacks on neutral shipping was well-known

3.11. Mr. President, Members of the Court, Iran's responsibility for these mine attacks was widely reported by the international shipping community (tab 13). In June 1987, *Jane's Defence Weekly* reported that Iran's Revolutionary Guards had begun what it called "a minelaying campaign against Kuwait" that involved mining the shipping lanes into Kuwait's Al-Ahmadi oil terminal. The *Jane's* report noted that shipping officials "believe the intensified mining is aimed at disrupting plans for the United States and Soviet navies to start escorting convoys of vessels to protect them from Iranian surface and air attack" (Exhibit 35).

3.12. In February 1988, the General Council of British Shipping, a report of which was cited with approval by counsel for Iran on Wednesday, issued guidance notes for shipping in the Gulf that summarized Iran's minelaying activities in the following terms:

"In mid 1987, the Iranians resorted to mining selected areas, again making life difficult for ships trading to and from Kuwait. A mine field was located in the Mina Al Ahmadi deepwater channel, but only after four ships had been struck and suffered damage. A further mine field was located off Farsi Island, but again only as the result of damage to a vessel which was bound for Kuwait.

Later in the year, mines were located off Fujairah following an incident involving the *Texaco Caribbean*, which struck a mine, in what had until then been regarded as a "safe" area being used for crew changes and replenishment of ships stores. It was this incident that prompted the British Government to send a fleet of British minesweepers and support vessels to the Gulf." (Exhibit 2; tabs 14 and 15.)

3.13. In a June 1988 report, the International Association of Independent Tanker Owners described Iran's use of mines to attack neutral shipping in similar terms (Exhibit 1). Lloyd's Maritime Information Service concluded that Iran was responsible for the mine attacks on *Marshal Chuikov*, *Bridgeton*, *Texaco Caribbean*, and *Anita*, as well as for several other mine attacks in the Gulf (Exhibit 9).

3.14. These are specific and conclusive statements of Iranian responsibility for particular attacks and contrast sharply with the casual remarks expressing some uncertainty about Iran's involvement in mining activity, cited to the Court, often out of context, by Iran's counsel on Wednesday.

Statements by Iranian officials confirm Iranian responsibility

3.15. The evidence of Iran's mine attacks is not, however, limited to the contemporaneous and uniform conclusions of well-respected shipping authorities. It is confirmed by statements at the time by senior Iranian officials. Ali Akbar Hashemi-Rafsanjani, then the Speaker of the Iranian Majlis, delivered a sermon on the day of the attack on *Bridgeton* in which he stated:

"If our ships are hit, the ships of Iraq's partners will be hit. Of course we will not claim responsibility for anything, for it is an invisible shot that is being fired . . .

"[T]hey will provide escort for four ships, what about the rest? Each day several ships berth in Kuwait and then set sail; these are cargo ships carrying goods, oil and other commodities. Therefore, several vessels visit Kuwait every day. How extensive a retaliation do we need? Two per week, eight per month, five? . . . Consequently, nothing can stop us from retaliating. Then why is the United States bothering to undertake such an expensive operation?" (Exhibit 50; tabs 16 and 17.)

3.16. Though *Texaco Caribbean* was carrying Iranian crude at the time it was attacked about two weeks later, and thus might not otherwise have seemed a likely Iranian target, Majlis Speaker Rafsanjani delivered another sermon shortly after the attacks on *Texaco Caribbean* and *Anita* in which he boasted of the attacks. In it he said:

“It is not like an ocean where there are many sea lanes. It does not matter who mines the Persian Gulf. We have not yet accepted the responsibility for mining it . . .

However, if we intend to plant mines, well then, oh God, it is quite a different story because we can move from any point. We can cover an area for half an hour, making it unfit to use for shipping. This is fully within our means.

You have seen two examples of this: the mines and the boats. There are other things you have not seen. We do not reveal everything. When a disagreement arises, then you will see. This time you came and realized that you needed minesweepers. You had to wait for the minesweepers to come . . . from the other side of the world.” (Exhibit 55; tabs 18 and 19.)

3.17. Mr. President, Members of the Court, such statements by senior Iranian officials are entitled to substantial weight under the practice of this Court. But there is more. Iranian mines were found at or near the scene of each of these attacks.

Iranian mines were found at or near the scenes of these attacks

3.18. When naval forces employ mines to disrupt shipping traffic in an area, they do not lay a single mine; rather they lay a series of mines covering the area they wish to affect. Iran’s forces followed this practice. As a result, when a ship hit one of Iran’s mines, there were additional Iranian mines to be found in the vicinity serving, in essence, as Iranian calling cards for the attack. In the cases of each of the mine attacks I have been discussing, Iran left such calling cards at the scene.

3.19. It was possible to identify the mines found at the attack scenes as Iranian mines because Iran’s mines contained a number of distinctive physical characteristics. Central to understanding these distinctive characteristics was the discovery by United States forces of a cache of Iranian naval mines when they captured the *Iran Ajr*.

***Iran Ajr* caught laying mines in commercial shipping lanes in the Gulf**

3.20. As I have indicated, on 21 September 1987, United States forces captured an Iranian naval vessel, *Iran Ajr*, in the process of laying mines in international waters off the coast of

Bahrain. United States reconnaissance forces initially detected *Iran Ajr* departing Iran's exclusion zone near the Rostam oil platform complex and heading toward Bahrain. Surveillance helicopters launched from the U.S.S. *Jarrett* monitored the movements of *Iran Ajr* and observed its crew removing canvas covering from mines and beginning to lay the mines in the Gulf, using a ramp that had been extended over the side of the vessel. You can see the ramp clearly in the photograph currently on the screen. The United States helicopters then opened fire on the vessel to stop its minelaying activity. The minelaying ceased for approximately 30 minutes, but then began again, prompting a further round of fire from the United States helicopters that again interrupted the minelaying. United States forces boarded and seized the vessel early the next day.

Distinctive characteristics of Iranian mines

3.21. When United States forces boarded *Iran Ajr*, they discovered nine Iranian SADAF-02 mines arrayed on the deck of the ship in preparation to be laid into the Gulf. In the photograph now on the screen, one can see these mines and, highlighted on the deck, the equipment that is being used to arm the mines. United States naval mine warfare experts subsequently identified several characteristics of the mines that differed from those of standard Soviet-made M-08 mines commonly used by a number of navies around the world. These characteristics are explained in detail in the statement of Donald Jones, a United States Navy Mine Warfare Analyst (Exhibit 37) and are illustrated on the screen, and at tab 24 in the judges' folder. The distinctive characteristics of the Iranian mines included the following:

- A diameter of 800 mm. This made the Iranian mine substantially smaller than the standard M-08 mine, which had a diameter of 876 mm.
- An anchor in the shape of a deep bowl. The bowl shape of the Iranian mine's anchor was different from that of the cradle shaped anchor of the standard M-08 mine.
- A thin outside casing, measuring 2.7 mm. The standard M-08 mine had a thicker casing, measuring 4 mm.
- Welded eyes which could be used for attaching cables to lift the mine. The standard M-08 mine was fitted with lift rings for this purpose.

3.22. The characteristics of the mines found aboard *Iran Ajr* are also different from those of the mines employed by Iraq during the Iran-Iraq war, as is illustrated by the slide that is currently on the screen. Iraqi forces laid two types of mines during the war: the Myam and the Manta. Again, these differences are explained in the statement of Donald Jones in the record (Exhibit 37; tab 25). The Myam weighs approximately 50 kg; the mines found aboard *Iran Ajr* weighed over 170 kg. The Myam mine also had a diameter of less than 550 mm, about one-third smaller than that of the *Iran Ajr* mines. The Manta mine has a completely different shape from the *Iran Ajr* mines: it is shaped like a truncated cone, whereas the *Iran Ajr* mines were spherical in shape. The Manta also has a glass reinforced plastic casing, in contrast to the steel casing of the *Iran Ajr* mines. There could be no mistaking Iranian mines for Iraqi mines.

3.23. One final characteristic of the mines found aboard *Iran Ajr* should be noted (tab 26). Each of the mines found aboard *Iran Ajr* contained a serial number, consisting of four groups of digits, painted in white on the mine's black exterior casing. United States analysts had never encountered such a numbering system on mines. This serial number was a further unique signature that distinguished Iran's mines.

3.24. Iran does not dispute that the mines found aboard *Iran Ajr* were Iranian mines, although it does dispute that *Iran Ajr* was in the process of laying mines when it was caught. Iran's account of *Iran Ajr's* actions — that it was “simply transporting mines to the northern end of the Persian Gulf”, but was not actually involved in laying them — fails to withstand even minimal scrutiny. There would be no reason for an Iranian ship transporting mines to Bushehr, in the far north-eastern part of the Gulf, to transit international waters, well outside of Iran's exclusion zone where Iranian land based forces and warships would be able to protect it. Nor would there be any reason for a ship transporting mines to carry those mines on the ship's deck, where they could be lost overboard in heavy seas, rather than in the ship's hold. And the presence of the arming equipment in a state of readiness, as shown in the photograph that we saw a moment ago, is also inconsistent with Iran's account.

3.25. Now counsel for Iran on Wednesday referred to the “second-hand” nature of the United States account of *Iran Ajr's* activities on the night in question. I invite Members of the Court to read the declaration at issue which appears at Exhibit 58 (Counter-Memorial and Counter-Claim of

the United States), in which the officer-in-charge of the detachment of helicopters that observed the minelaying recounts his direct and personal experience in connection with the mission. He was in direct radio contact with the three helicopter pilots engaged in the mission at all relevant times. Each of the three was reporting to him in real time concerning what they were observing. It was *he* who instructed the pilots to order Iranian personnel to stop laying the mines.

3.26. But putting this issue aside, as Iran does not dispute that the mines found aboard *Iran Ajr* were Iranian mines, it presumably also cannot dispute that Iranian mines bore the characteristics exhibited by the *Iran Ajr* mines. It remains to demonstrate that mines bearing these same distinctive characteristics were found at the scene of the mine attacks that we are discussing.

The presence of Iranian mines in the *Marshal Chuikov* minefield

3.27. Following the mine attack on *Marshal Chuikov* in the vicinity of the deep water approach to Kuwait's Al-Ahmadi port, and three other mine attacks in the same area in the following weeks, a joint Kuwaiti-United States team undertook efforts to identify and clear mines from that area. Their efforts are described in detail in the statements of Kuwaiti Naval Force officials, and of Donald Jones (Exhibits 34 and 37, respectively). As these statements explain, the team discovered a total of ten mines tethered to anchors in the vicinity. One of these mines was removed from its anchor and towed to a Kuwaiti military installation for analysis; the others were detonated in place.

3.28. The analysis of the mine retrieved from the *Marshal Chuikov* field reveals that it bore the same characteristics as the Iranian mines later found aboard the *Iran Ajr*. Specifically, while these characteristics cannot be seen on the photograph on the screen, the mine had a diameter of 800.6 mm, a thin outside casing, welded eyes for use in lifting the mine case, and an anchor in the shape of a pot or deep bowl. It also had the Iranian-type serial number (02-5627-016-5) (Exhibits 34 and 37). The detailed analysis of this mine is contained in a report issued by the United States Naval Technical Intelligence Centre (Exhibit 38). This analysis made clear that the calling card left at the scene of the attack on the *Marshal Chuikov* was Iran's.

The presence of Iranian mines in the *Bridgeton* minefield

3.29. Some months after the mining of the *Bridgeton*, United States navy divers operating in the vicinity of the attack discovered and safely detonated a field of mines moored to anchors south-east of the location where the *Bridgeton* was struck. The United States divers who found the mines in the *Bridgeton* field were familiar with the Iranian mines found aboard *Iran Ajr* and had received intelligence briefings on their characteristics (Exhibit 49). The mines they found in the *Bridgeton* field bore the dimensions and distinctive welded eye of the mines found aboard the *Iran Ajr*. The mines were Iranian. This confirmed intelligence information that indicated that Iranian Revolutionary Guard forces on Farsi Island were responsible for laying the mine that the *Bridgeton* struck (Exhibit 46).

The presence of Iranian mines in the *Texaco Caribbean/Anita* minefield

3.30. Two months after the mine attacks on the *Texaco Caribbean* and the *Anita* near the Khor Fakkan anchorage in August 1987, naval forces from the United Kingdom and France undertook mine-clearing operations in the area. In the course of these operations, United Kingdom naval forces discovered five mines and four anchors. As explained in the statement of the United Kingdom Ministry of Defence (Exhibit 53), the United Kingdom forces identified these mines as Iranian manufactured SADAF-02 mines. The United Kingdom forces also noted that mines and anchors they found were marked with serial numbers. These serial numbers follow the pattern of the serial numbers found on the mines aboard the *Iran Ajr*. French forces also discovered Iranian mines in the vicinity. The distinctive characteristics of Iran's mines, including the serial number, are clearly visible in an underwater photograph, now on the screen, of a French diver with a mine found in the Khor Fakkan field.

Iran's denials of responsibility for its mine attacks

3.31. Mr. President and Members of the Court, the presence of Iranian mines at the scene of each of these attacks removes any doubt about Iran's responsibility. But Iran denies such responsibility. In fact, Iran has told this Court that it was not responsible for *any* mine attacks on commercial shipping during the Iran-Iraq war. In its 1993 Memorial, Iran states that

“There is equally no question that Iran laid some mines. But Iran's admission that it did so related to minefields laid for defensive purposes near Khor Abdullah.

What is by no means clear is who was responsible for the indiscriminate sowing of seabed mines and unanchored, or floating, mines which were discovered in 1987 in various parts of the Persian Gulf. Iran is clear that it was not Iran who was responsible.” (Memorial, paras. 4.65 and 4.66.)

3.32. Iran reiterated this denial in its 1999 Reply and Defence to Counter-Claim, where it stated categorically that “the only mines laid by Iran were laid in the Khor Abdullah channel north of Bubiyan Island. These mines were laid for defensive purposes to prevent Iraq from using this waterway to attack Iranian positions. Such mines had no effect on commercial shipping.” (Reply and Defence to Counter-Claim of Iran, para. 5.25.) Now I call your attention to the map currently on the screen, on which the Khor Abdullah channel can be seen in the far north-west corner of the Gulf. The mine attacks that we have been discussing are also marked on the map. Iran’s attacks were not limited to the area of the Khor Abdullah.

3.33. Iran has speculated that Iraqi mines could have floated down the Gulf from the Shatt Al Arab or Bandar Khomeini, but has not produced any evidence to support the view that this actually happened. At footnote 33 of its 1999 Reply, Iran asserts that a source that it cites, the *Lessons of Modern War* (by Anthony Cordesman and Abraham Wagner) suggests that the *Marshal Chuikov* was damaged by a “free-floating or breakaway mine”. But in fact, that book rejects Iran’s theory. The relevant excerpt states as follows:

“Iran responded [to stepped-up Iraqi attacks on Iranian ships] by continuing to escalate. Its next step was to mine one of three Soviet tankers that had been leased to Kuwait on May 16. The *Marshal Chuykov* was damaged by a mine in the upper Gulf, not far from the Neutral Zone. While this damage might have been coincidental and could have come from a free-floating mine, the combination of location and timing made an accident seem highly unlikely, particularly because Iran rapidly demonstrated it could carry out such attacks with excellent precision. Further, that same day, Iranian Radio quoted Chief Justice Abdulkarim Mousavi as saying that Iranian forces might have hesitated in attacking Kuwaiti tankers but would never do so in attacking foreign ships.” (Observations and Submissions on the United States Preliminary Objection of Iran, Exhibit 18.)

It should also be noted that many of the mines that were later found in the vicinity of the attacks were anchored Iranian mines, not free-floating or breakaway mines.

3.34. Iran has also produced a report from retired French Naval Captain Jacques Fourniol on the subject of alleged Iraqi responsibility for the mine attacks at issue. Captain Fourniol’s report on this point is limited to explaining that, and I am translating, “it is impossible to affirm that Iraq did not have access to the sea to lay mine fields in the Gulf”. Captain Fourniol’s report does not even

say, much less prove, that Iraq *was* responsible for any of these attacks. In this regard, it does nothing to answer the substantial body of opinion and evidence establishing Iran's responsibility.

3.35. Mr. President, Members of the Court, Iran's blanket denials of its responsibility for minelaying and mine attacks on neutral commercial shipping are demonstrably false. Notwithstanding the assurances that Iran provided to the Court at the beginning of these oral proceedings, substantial questions exist as to the veracity of the representations made by Iran to the Court. Recall Speaker Rafsanjani's assertion in 1987 that Iran would not claim responsibility for its attacks because "it is an invisible shot that is being fired". Sixteen years later, Iran appears to be taking a similar position before this Court.

Conclusion

3.36. Mr. President, I am near the end of my presentation, and it remains only to briefly review the submissions with respect to Iran's mine attacks on neutral shipping. Iran has denied that it laid mines anywhere other than in the Khor Abdullah channel north of Bubiyan Island and has denied that it was responsible for any mine attacks on neutral commercial shipping. *Jane's Defence Weekly* has told you this is false. The General Council on British Shipping and the International Association of Independent Tanker Owners have told you this is false. Lloyd's Maritime Information Service has told you this is false. British, French, Kuwaiti, and United States naval forces have told you this is false. And Iran's own senior officials have told you this is false.

3.37. You have seen that for each of the mine attacks at issue— those against *Marshal Chuikov*, *Bridgeton*, *Texaco Caribbean*, and *Anita*— Iran's calling card— more Iranian mines— were always found at or near the scene. You have seen a photograph of an Iranian mine anchored in place near the location where *Texaco Caribbean* and *Anita* were attacked. There can be no doubt about Iran's responsibility for these attacks.

3.38. There can also be no doubt about the damage that Iran's mine attacks wrought. Iran's attacks killed and injured sailors. They sank one vessel and caused millions of dollars of damage to others. They resulted in the spillage of tens of thousands of barrels of oil. And by targeting in particular the multinational efforts to protect shipping transiting the Gulf, they escalated Iran's threat to the interests of the international community.

3.39. This would not represent the end of Iran's assault on shipping in the Gulf, however. Within weeks following the seizure of *Iran Ajr* laying mines in the Gulf, Iran opened a new front in its campaign against United States and other neutral shipping by launching missile strikes on two United States vessels. Iran persisted in its mine attacks as well, including its attack on the U.S.S. *Samuel B. Roberts*, about which you will hear on Monday. Mr. President, that concludes my presentation. After the break I ask that you call on Mr. Ronald Neubauer, who will describe Iran's missile attacks and demonstrate Iran's responsibility for them. Thank you.

The PRESIDENT: Thank you, Mr. Mathias. The hearing is now suspended for ten minutes.

The Court adjourned from 11.35 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. I now give the floor to Mr. Neubauer.

Mr. NEUBAUER:

**4. IRAN'S RESPONSIBILITY FOR MISSILE ATTACKS
ON THE *SUNGARI* AND THE *SEA ISLE CITY***

4.1. Thank you, Mr. President. It is an honour and privilege for me to again appear before this Court on behalf of the United States.

4.2. Mr. President, Members of the Court, you have just heard about Iran's use of mines to attack United States and other neutral shipping in the Gulf in mid-1987. Less than three weeks after United States forces intercepted the *Iran Ajr* in the act of laying mines in Gulf shipping channels, Iran launched devastating missile attacks on two United States vessels, the *Sungari* and the *Sea Isle City*. These attacks caused enormous damage to the vessels and injuries to the crew members. At the time they were attacked, these vessels were near Kuwait's Al-Ahmadi Sea Island terminal, a location Iran had earlier targeted with mine attacks. The evidence will show that, just as Iran's responsibility for mine attacks in the Gulf was clear, so too is Iran's responsibility for these missile attacks.

The missile attacks on the *Sungari* and the *Sea Isle City*

4.3. Let me begin by describing the attacks themselves.

4.4. On 15 October 1987, Iran launched a missile from the Faw area that struck the United States-owned tanker, *Sungari*. As you can see on the screen, the missile ripped a large hole in the *Sungari*'s starboard tank (tab 35). It also ignited a fire that sent a towering column of smoke into the air that took firefighters five hours to extinguish (tab 36). The *Sungari* was carrying 200,000 tons of crude oil when it was attacked, some of which spilled into the water (Exhibit 87). (All exhibit references are to numbered exhibits in the Counter-Memorial and Counter-Claim and the Rejoinder of the United States unless otherwise noted.)

4.5. The next day, Iran launched a second missile from the Faw area, this time striking the United States tanker, *Sea Isle City*. The *Sea Isle City*'s master, John Joseph Hunt, described seeing the missile as it approached the ship:

“As the helmsman turned to me to report the ship’s course, he looked over my shoulder and said ‘What is that?’ I turned and saw a small plume of black smoke emanating from a large missile. I immediately tried to reach the helm to take evasive action, but I did not succeed. The last thing I remember was hearing a metal on metal sound. It was the missile striking us. Then all went black.” (Exhibit 88.)

The attack permanently blinded Captain Hunt. He also suffered a fractured skull, a collapsed lung, and many broken bones (tab 37). Five other crew members also suffered significant injuries, including seaman Victorino Gonzaga of the Philippines, who was also blinded (tab 38). The attack also caused significant blast and fire damage to the ship, which cost its owners \$5 million to repair and nearly \$1 million in loss of hire income (Exhibit 89).

4.6. Both the *Sungari* and the *Sea Isle City* were attacked near Kuwait’s al-Ahmadi Sea Island Terminal, which was Kuwait’s main export oil terminal (tab 39). These attacks clearly indicated Iran’s desire to disrupt Kuwait’s international oil trade and posed great danger to the world’s access to oil from Kuwait, as well as to the vessels, cargo, and seamen they targeted.

Iran’s responsibility for the attacks on the *Sungari* and the *Sea Isle City* was well known

4.7. Iran’s responsibility for these attacks was well understood and widely reported within the international shipping community. Lloyd’s Maritime Information Service (Exhibit 9), the General Council of British Shipping (Exhibit 2), analysts writing in *Jane’s Intelligence Review* (Exhibits 4 and 91), and others all attributed these attacks to Iran. Cordesman and Wagner, in their

book *The Lessons of Modern War: The Iran-Iraq War*, a source cited by Iran, also attributed these attacks to Iran (Exhibit 97).

4.8. Moreover, when another missile launched from the Faw area struck the Al-Ahmadi Sea Island terminal itself on 22 October 1987, one week after the *Sungari* and the *Sea Isle City* were struck outside the terminal, Iran's responsibility was again well understood. Both the President of Egypt and the Ministerial Council of the Gulf Co-operation Council issued statements condemning this attack as "Iranian aggression against Kuwait". Numerous public sources also attributed this attack to Iran.

4.9. Attributing these attacks to Iran made common sense. Only Iran had a motive to launch attacks directed at Kuwait's major oil terminal at al-Ahmadi and the international oil trade associated with it. Nevertheless, Iran has suggested that Iraq was responsible for these attacks. Iran's counsel suggests that Iraq repeatedly attacked "apparently friendly targets, whether by error as a result of its avowed 'shoot first — identify later' policy, or by design in order to keep such friendly States eager in their financial and military support of Iraq, or in an attempt to lay the blame on Iran and further internationalize the conflict". However, it defies all sense and all logic for Iraq to repeatedly launch missile attacks at Kuwait's al-Ahmadi terminal and ships conducting trade with Kuwait, given Kuwait's general sympathy toward Iraq in its war with Iran. Iran has been unable to produce any report from any independent source that concludes that Iraq was, in fact, responsible for these attacks. Iran cannot produce any such reports because they do not exist. The notion that Iraq was somehow responsible for the attacks on the *Sungari* and the *Sea Isle City* is a fantasy indulged by Iran. The Court should find otherwise.

4.10. The universally held understanding that Iran was responsible for the missile attacks on the *Sungari* and the *Sea Isle City* is abundantly supported by a vast array of evidence, which we will review during the course of my presentation and that of Mr. Moore who will follow me. This evidence includes eyewitness accounts establishing that the missiles that struck the *Sungari* and the *Sea Isle City* were fired from Iranian-controlled territory in the Faw area. It also includes analysis of physical evidence establishing the type of missile — the HY-2 missile (which Iran sometimes refers to as the "silkworm" missile) — used in the attacks. And, it includes satellite imagery demonstrating clearly that, at the time of the attacks, Iran possessed HY-2 missiles and launching

sites from which it could fire them, on the territory it controlled in the Faw area. This evidence will also show that Iraq could not have been responsible for these attacks.

The missiles were fired from Iranian-controlled territory

4.11. Mr. President, Members of the Court, the evidence of Iran's responsibility for the missile attacks on the *Sungari* and the *Sea Isle City* begins with the fact that both missiles were launched from the Faw area. Iran captured the Faw Peninsula from Iraq during fighting in 1986 and still controlled that territory in October 1987. It is important to note that Iran does not dispute this. Iran has complained that the United States has been inconsistent with its references to the relevant geography — in early pleadings referring to missile attacks from the Faw Peninsula and in later pleadings referring to missile attacks from the Faw area or the vicinity of the Faw Peninsula. I will attempt to be consistent during my presentation and refer to the Faw area.

4.12. That the missiles had been launched from a position north of the Al-Ahmadi Sea Island terminal was clear from the direction from which the missiles approached their targets. Narrowing launch location to the Iranian-controlled Faw area was made possible by eyewitness accounts of the path followed by the missiles.

4.13. Kuwaiti military personnel observed the path of the missiles that struck both the *Sungari* and the *Sea Isle City* (tab 40). Kuwaiti military personnel stationed on Bubiyan and Faylakah Islands saw the missile that struck the *Sungari* as it was launched from the Faw area. They saw the missile follow a path east of Faylakah Island heading in the direction of the Al-Ahmadi Sea Island terminal. The missile was easily visible because of its plume, low altitude, and relatively slow speed of flight. Kuwaiti personnel tried to shoot down the missile with surface to air missiles, but were unsuccessful. The next day, the Commander of Kuwait Air Defence, Colonel Al-Suwaiti, from his position on Awhah Island, observed another missile flying overhead. According to his eyewitness account, the missile "originat[ed] from the direction of the Faw Peninsula and [flew] in the direction of the Sea Island Terminal". Minutes later the missile struck the *Sea Isle City* (Exhibit 82). While Iran has questioned Colonel Al-Suwaiti's description of the missile following a south-southeasterly course, the two reference points, the Faw Peninsula and the

Sea Island terminal, were well-known landmarks reliably establishing the missile's course (Exhibit 82).

4.14. Kuwaiti personnel were particularly familiar with these landmarks because, in the months prior to the attacks, Iran had launched no fewer than five missiles from the Faw area towards the Al-Ahmadi Sea Island terminal. Kuwaiti military observers witnessed these missiles in flight, and in some instances from launch as well.

4.15. The first two missiles, launched on 21 January and 24 January, were tracked on radar by Kuwaiti Air Defence personnel stationed on Faylakah Island, as well as visually observed in flight by personnel on both Faylakah and Bubiyan Islands. Each of the missiles came from the direction of the Faw area, flew relatively slowly and at low altitude, and exhibited a plume. The 21 January missile landed 1 km south of a Kuwaiti air defence battery on Faylakah Island, and Kuwaiti personnel recovered fragments from this missile, including parts of the missile's seeker. The 24 January missile was observed landing in the water north of Faylakah Island. Following these two missile launches, the Kuwait Air Defence Forces moved the observers on Faylakah and Bubiyan Islands to new positions that would allow them to better spot missile launches from the Faw area.

4.16. The 2, 4, and 5 September missiles were each observed being launched from the Faw area by Kuwaiti military personnel stationed on Faylakah and Bubiyan Islands. The flights of these missiles were tracked both on radar and visually by Kuwaiti personnel. The 2 September missile landed in the water north-east of Faylakah Island. The 4 September missile struck land 3 km south of Mina Abdullah, over 100 km from the Faw area where Kuwaiti military personnel observed it being launched. As they did with the 21 January missile, Kuwaiti personnel recovered fragments of this missile, including parts of the missile's seeker. The 5 September missile splashed into Kuwait Bay.

4.17. In light of their prior experiences in observing missiles fired from Iranian-controlled territory in the Faw area in January and September of 1987, the Kuwaiti military observers were vigilant and well-placed to observe the missiles that struck the *Sungari* and the *Sea Isle City* when Iran launched them in October from the same area.

The missiles fired were HY-2 missiles

4.18. Mr. President, Members of the Court, these previous Iranian missile launches also made it possible to identify the type of missile that struck both the *Sungari* and the *Sea Isle City*. As we have just seen, Kuwaiti military personnel recovered missile fragments from two of the missiles from among the series of five missiles launched from the Faw area. Analysis of the fragments from these two missiles — the 21 January missile and the 4 September missile — established that the missiles used in this series of attacks were HY-2 missiles. As Mr. Moore will demonstrate later, only Iran could have launched HY-2 missiles from the Faw area at the time of the attacks on the *Sungari* and the *Sea Isle City*.

4.19. It was possible to identify these missiles as HY-2 missiles because the fragments recovered from the missiles contained components specific to ground-launched HY-2 missiles. United States military analysts examined and performed extensive tests on the fragments (Exhibit 82). In the case of the 21 January missile, fragments of the missile's seeker, which were recovered, contained characteristics specific to the seeker of the HY-2 missile (Exhibit 83). In the case of the 4 September missile, fragments of the seeker and other electronic components made it possible to identify the missile as an HY-2 missile (Exhibit 83). The detailed reports of these analyses are also annexed to the 1997 Counter-Memorial of the United States. The United States analysis of the 21 January missile has been confirmed by Mark Pitt, the Australian Defence Intelligence Organization's senior missile analyst (Exhibit 86). It was not possible to have Mr. Pitt confirm the United States analysis of the 24 September missile because the missile fragments were lost during Iraq's 1990 invasion and occupation of Kuwait and photographs of the fragments were not taken during the United States analysis.

4.20. Iran suggested that the Court should view with suspicion that the United States has not produced missile fragments from the *Sea Isle City* to further support the conclusion that it was an HY-2 missile. Given the absolutely urgent need of personnel to fight the massive fires and attend to the seriously wounded, it should not be surprising that the missile fragments were not recovered.

4.21. Knowing that the missiles used in these attacks were HY-2 missiles makes it possible to dispose of Iran's far-fetched suggestion that the missiles that struck the *Sungari* and the *Sea Isle City* could have been launched from the air. The HY-2 is a ground-launched missile.

Ground-launched missiles have airframes with mounting features that are distinct from those of air-launched missiles (Exhibit 82). The mechanical and electronic mounting features on a ground-launched missile allow for its attachment from the bottom to a land-based launcher. The mountings for air-launched missiles are located at the top of the missile to allow for attachment under the wing of an aircraft. The HY-2 airframe, designed to be launched from the ground, could not be attached to, nor be launched from, an aircraft.

4.22. Equally far-fetched is Iran's suggestion that Iraq could have launched the missile from a ship or boat. This was not possible because Iraq had no surface vessels equipped to launch HY-2 missiles. Further, Iran has offered no evidence in support of this suggestion. The HY-2 missiles that struck the *Sungari* and the *Sea Isle City* could only have been launched from the ground, and not from an aircraft nor from a ship or boat.

4.23. Mr. President, Members of the Court, the evidence from prior missile launches from the Faw area also categorically refutes Iran's suggestion that the HY-2 missile lacks sufficient range to fly from the Faw area to the locations where the *Sungari* and the *Sea Isle City* were struck. This was a distance of approximately 98 km (tab 41). Iran has noted published reports indicating that the maximum effective range of an HY-2 missile is only 95 km. However, the HY-2 manufacturer's published characteristics for the missile specify that its "powered range" is 105 km. Moreover, the missile Iran fired on 4 September struck land 3 km south of Mina Abdullah, approximately 106 km from the Faw area where Kuwaiti military personnel had seen it being launched (tab 42). As we have seen, analysis of fragments from this missile indicate clearly that it was an HY-2 missile. Ted Hooton, Editor of *Jane's Naval Weapon Systems Yearbook*, reported the maximum range of the HY-2 missile to be 135 km (Exhibit 4). Aerodynamic and fuel analysis of the HY-2 missile conducted by the Australian Defence Intelligence Organization concluded that it has a range of 105 km (Exhibit 86). Moreover, under favourable conditions, a missile can exceed even these stated ranges. These facts leave no room for doubt that an HY-2 missile fired by Iran from the Faw area could, and in fact did, fly far enough to strike the *Sungari* and the *Sea Isle City*.

4.24. Mr. President, Members of the Court, knowing that HY-2 missiles were the source of the attack on the *Sungari* and the *Sea Isle City* is also important because only Iran was capable of launching these missiles at the time and place of the attacks. This is demonstrated by satellite

imagery showing that, at the time of the attacks, Iran had deployed HY-2 missiles and the equipment to launch them to the area from which these attacks were launched.

4.25. Mr. President, to review the evidence on these points I ask that you now call on Mr. John Moore. Thank you very much for your attention.

The PRESIDENT: Thank you, Mr. Neubauer. I now give the floor to Mr. Moore.

Mr. MOORE:

**5. IRAN'S RESPONSIBILITY FOR MISSILE ATTACKS
ON THE *SUNGARI* AND THE *SEA ISLE CITY***

5.1. Thank you, Mr. President. I am deeply honoured to appear before the Court. As Mr. Neubauer indicated I will review for the Court satellite imagery and other evidence establishing Iran's responsibility for the attacks on the *Sungari* and the *Sea Isle City*.

Iran had HY-2 missiles and associated equipment needed to launch them in the area of the Faw Peninsula at the time of the attacks

5.2. Mr. President, at the time of the HY-2 missile attacks on the *Sungari* and the *Sea Isle City*, Iran possessed HY-2 missiles, and associated equipment needed to launch them, on territory it possessed in the Faw area. These facts are demonstrated clearly by overhead reconnaissance imagery provided by the United States.

5.3. As part of its written filings in 1997 and 2001, the United States provided the Court with a number of overhead images of the Faw area (Exhibits 94 and 208). (All exhibit references are to numbered exhibits in the Counter-Memorial and Counter-Claim and the Rejoinder of the United States unless otherwise noted.) With the permission of the Court, in November 2002, the United States submitted the report of Deborah Martin, which explains in detail what these images show. Each of the images I will display is contained in Exhibits 94 and 208 of Ms Martin's report. Copies of the graphics in my presentation, including the images, are tabbed in your judges' folders for your reference during my presentation.

5.4. Ms Martin is an expert in imagery analysis. She has 18 years of experience as an imagery analyst with the United States National Imagery and Mapping Agency. She is responsible for analysing overhead imagery taken from satellites and aerial reconnaissance aircraft for the

purpose of providing defence-related information used in the planning and conduct of military operations by the United States Government. She reviewed the imagery contained in her report at the time it was collected. She has confirmed to the Court in her report that the images were taken on the dates indicated. Mr. President, before reviewing the images, it is useful to recall what Secretary of State Powell told the Security Council earlier this month about satellite imagery. He noted: “[T]he photos I am about to show you are sometimes hard for the average person to interpret . . . The painstaking work of photo analysis takes experts years and years of experience, poring for hours and hours over light tables.”

5.5. Mr. President, the first thing these images make clear is Iran possessed missiles and associated equipment in the Faw area at the time of the attacks on the *Sungari* and the *Sea Isle City*. Iran has cited materials suggesting that, at the time, some United States officials may not have believed Iran to possess such missiles in the Faw area. These images make clear that it did.

5.6. Images attached to Ms Martin’s report, taken on 9 September 1987 and 16 October 1987, show several items of HY-2 missile equipment on Iranian-controlled territory in the Faw area. Specifically, these images show HY-2 missile launchers, transporters, and crates used to store HY-2 missiles. To identify the equipment in the images, it helps to know what they look like. Included in United States Exhibit 94 to the United States pleadings are photographs and line drawings of each piece of equipment. Imagery analysts rely on the size, shape, and other distinctive visual characteristics of these pieces of equipment in order to identify them when they appear in overhead images.

5.7. To help in understanding imagery we need to first look at ground photos and line drawings of the equipment. First, at tab 43, we have a line drawing and photograph of an HY-2 missile launcher. Notable visual features are the flat surfaces of the rails on which the missile sits and the side extensions of the stabilizing jack housing. The line drawing indicates the launcher’s dimensions, notably its length of 6.9 m.

5.8. Next, at tab 44, we have a photograph and line drawing of an HY-2 missile transporter. The transporter consists of two pieces: a trailer on which the missile sits while being transported, and a truck cab that tows the trailer. The transporter contains four unique rib frameworks seen on

the line drawing. That supports a canvas cover that fits over the transporter. The transporter's total length is 15 m.

5.9. Lastly, at tab 45, we have a line drawing and photograph of an HY-2 missile storage crate. Notable features of the crate are its pitched roof and the protrusion at the end of the crate to accommodate the nose of the missile. The length of the crate is 7.6 m.

5.10. As Ms Martin's report explains, these pieces of equipment are visible in several of the images attached to the report. For orientation purposes, I will first show you three overview images of the Faw area, so you can understand where this equipment was located. The image, tab 46A, shows a general overview of the area. The next image, tab 46B, brings us closer. The image at tab 46C indicates the locations where Iran's HY-2 missiles and associated equipment were deployed.

HY-2 missile launchers and transporters

5.11. As Ms Martin's report explains, the images contained in tab 46D and tab 46E show HY-2 missile launchers and transporters. The image in tab 46D was taken on 16 October 1987, the day the *Sea Isle City* was attacked, and one day after the attack on the *Sungari*. In it are two HY-2 missile transporters, one with its canvas covering in place, and two trucks towing HY-2 missile launchers.

5.12. The missile transporters are identified by their shape as well as the truck's cab. Also visible are the four ribs supporting the transporter's canvas covering. The configuration of these ribs matches the line drawing that I have just pointed out. Iran has suggested that this rib configuration could be mistaken for that employed by more general purpose forces transporters, but has provided no evidence to support this assertion. In fact, as Ms Martin's statement indicates, this rib configuration is unique to the HY-2 missile transporter, and its presence here serves to identify this object. The length of these objects in the image conforms to the length of an HY-2 missile transporter.

5.13. The missile launchers and the trucks towing them are distinct in the image. The flat surfaces of the truck's cab and bodies are visible, as are the long, narrow flat surfaces of the rails on the missile launcher.

5.14. The image in tab 46E was taken on 9 September 1987, four days after the 5 September missile launch, and more than one month before the October attacks. This image shows an HY-2 missile launcher towed by a truck. The flat surfaces of the truck's cab and body are visible, as are the long, narrow flat surfaces of the rail on the missile launcher. The extension of the stabilizing jack housing on the sides of the missile launcher, which can be seen in the photograph and line drawing, are seen on the side of the missile launcher. The length of the launcher in this image conforms to the length of an HY-2 missile launcher.

HY-2 missile storage crates

5.15. As Ms Martin's report also explains, the image in tab 46F shows HY-2 missile storage crates. The image was also taken on 9 September 1987. The two HY-2 missile crates are rectangular in shape with pointed, pitched roofs just like the photograph and line drawing. On one of the two crates, the protrusion at the end of the crate that accommodates the missile's nose can be seen on the image. The length of the crates in the image conforms with the length of an HY-2 missile crate.

5.16. Thus, as explained in Ms Martin's report, the size, shape, and other distinctive visual characteristics contained in these images are those of HY-2 missile launchers, transporters, and storage crates. These images provide clear photographic proof that Iran maintained such equipment in the Faw area.

Iran had operable HY-2 missile launching sites in the area of the Faw Peninsula at the time of the attacks

5.17. Mr. President, at the time of the attacks on the *Sungari* and the *Sea Isle City*, Iran also had operable HY-2 missile launching sites in the Faw area. Iran was thus able to launch the HY-2 missiles.

Sites Iran acknowledges were operable

5.18. Iran had suggested it could not launch missiles from these sites. It told the Court in its 1999 Reply that "due to the fact . . . that the Fao peninsula was subject to some of the most intense fighting of the war throughout 1986 and 1987 and that there were technical limitations to Iran's capacity to deploy missiles from Fao, it was impossible for Iran to use these sites" (Reply of Iran,

para. 4.19). Specifically, Iran provided testimony from Mr. Mohammad Youssefi that because “all access roads to the missile sites were totally destroyed” these sites “became useless and remained inoperative during all the time that the Faw was under Iranian control”.

5.19. The United States has provided the Court with overhead imagery demonstrating that these statements are completely false. The Court has just seen a series of overhead images showing that Iran did deploy HY-2 missiles and associated equipment in the Faw area at the time of the missile attacks on the *Sungari* and the *Sea Isle City*. Imagery showing vehicle traffic at and near Iran’s HY-2 missile launching sites in the Faw area will make it clear that the roads around such sites, far from being destroyed, actually supported vehicle traffic and provided access to the missile launching sites.

5.20. Using commercially available computer software and the images the United States has provided, we will now move to one of Iran’s HY-2 missile launching sites in the Faw area. The image contained as tab 46G provides further orienting overviews of a portion of this area, where an Iranian HY-2 missile launching site designated by Iran as Site 3 is located. This image, tab 46H, zooms us into the site.

5.21. The image contained as tab 46I provides a detailed view of the site. This image was taken on 16 October 1987, the day of the attack on the *Sea Isle City*. The site has four launch pads for firing HY-2 missiles. These pads are discernible by their keyhole shape. While Iran has claimed that these former Iraqi sites could only be used to fire towards Iran, in actual fact, the HY-2 missile launcher is mobile. As the manufacturer’s photographs have shown (Exhibit 94), the HY-2 missile is on wheels and can be pointed in any direction to fire. Clearly visible on the image and highlighted at the bottom in insets A and B is the access road that services the missile launching pads. You can see that there are six vehicles on this road. The vehicle traffic makes clear that the road was functioning and provided access to the missile launching sites. It also makes clear Iran’s statement that roads to its missile launching sites were totally destroyed is completely false.

5.22. Indeed, Mr. Youssefi seems to acknowledge that his earlier statement to the contrary was incorrect. In his January 2003 comments on this image he told the Court that the road depicted in the image, which clearly provides access to the missile sites, “was indeed used every day by a

great number of vehicles to provide logistical support to the forces stationed along the contact line”. This statement directly contradicts his earlier statement that all roads providing access to Iran’s missile sites were destroyed.

The additional Iranian site at Nahr-e Owyeh

5.23. In addition to the three missile launching sites Iran acknowledges controlling in the Faw area, the United States has also provided the Court with satellite imagery of a fourth missile launching site, tab 46J, on Iranian territory just east of the Faw Peninsula. This site is known as Nahr-e Owyeh.

5.24. The image provides an overview showing Nahr-e Owyeh’s position in the Faw area along with the other three sites for launching HY-2 missiles. The image at tab 46K brings us closer to the site. Tab 46L takes us to the site itself. This image was taken on 14 December 1987. The site’s two launch positions are outlined on the image. The previous site we saw was built by Iraq and captured by Iran. This site was built by Iran and is different in its layout. Unlike the keyhole-shaped concrete launch pads found at the captured missile sites, this temporary site has a treated surface over the sandy road. The treated area shows up as darker shading on this image. Ms Martin noted in her report that the launch positions have “adjoining straight road approaches to align the missile and transporter launcher”. This site is a temporary site Iran hastily built to expand its wartime capability to launch HY-2 missiles. The image also shows support tents near the launch positions, which could be used to house electronic equipment needed to fire an HY-2 missile. Housing the electronic equipment in such tents eliminates the need for numerous vehicles to be at the launch site.

5.25. Most importantly, the image shows an HY-2 missile on its launcher at one of the two launch positions. As described in Ms Martin’s report, “the missile and launcher are identifiable by their dimensions and size . . . The pointed nose of the missile is aimed at the sea . . . The missile’s wings slightly flare out at the rear and . . . The tail of the missile can be seen as a shadow on the ground.” These same characteristics of the missile on the launcher can be seen in the photo from the manufacturer’s brochure. The presence of an HY-2 missile on a launcher here removes any

doubt that this location was an HY-2 missile launching site and confirms that the site was fully operational.

5.26. Mr. President, to review, it is clear from Iran's own admissions and from overhead imagery of the Nahr-e Owyeh site that Iran possessed at least four HY-2 missile launching sites on territory it controlled in the Faw area. Overhead imagery also makes clear that the roads to sites supported vehicle traffic and were operable at the time of the 1987 attacks on the *Sungari* and the *Sea Isle City*. We have also seen that Iran possessed HY-2 missiles and equipment to launch them in the Faw area at the time of these attacks. Iran's efforts to suggest that it lacked the ability to fire the missiles that struck the *Sungari* and the *Sea Isle City* do not withstand scrutiny.

Iraq could not have fired the missiles that struck the *Sungari* and the *Sea Isle City*

5.27. Moreover, only Iran had this ability. In effect, in order to escape its responsibility for these attacks, Iran has suggested to this Court that Iraq could have been responsible for these attacks. In doing so, it has offered the Court a wildly imaginative theory. It begins with the assertion that Iraq maintained an HY-2 missile launching site on territory it controlled on the front part of the Faw Peninsula. It then postulates that Iraq could have fired the missiles from this site. The missiles then could have been programmed to execute a sharp turn to allow the missiles to assume a course consistent with those that struck the *Sungari* and the *Sea Isle City*. According to Iran, such a course would have allowed the missiles to appear to observers on Bubiyan and Faylakah Islands to have come from Iranian-controlled territory even though launched from Iraq.

5.28. There are two fundamental flaws in Iran's theory. First, Iraq had no such missile launching sites in the Faw area at the time of the attacks. And second, even if such a site had existed, the HY-2 missile is incapable of being programmed to execute the sort of sharp turn postulated by Iran.

Iraq had no HY-2 missile-launching site in the Faw area

5.29. As just noted, Iran asserts that Iraq had an HY-2 missile launching site in the Faw area. In this regard, Iran has produced a statement from Mr. Mohammad Youssefi, asserting that such a site existed at co-ordinates 30° 00' 12" N, 48° 17' 05" E on the Faw Peninsula. Mr. Youssefi is the

same expert who told the Court that all roads leading to Iran's missiles sites were destroyed and useless, which they were not.

5.30. As we move towards the area where Mr. Youssefi asserted an Iraqi site existed, we will also see that his contention is again refuted by photographic evidence. The line of contact where Iranian and Iraqi forces were fighting is shown in red. The image at tab 46M shows an overview of the area. The image, tab 46N, takes us to the precise location of the site asserted by Mr. Youssefi. As Ms Martin's report explains, this image was taken on 13 November 1987 — less than a month after the *Sungari* and the *Sea Isle City* attacks. This image shows does not show an HY-2 missile site at this location. Ms Martin's statement did indicate that Iraq built an HY-2 missile site in this area in 1989, a year after the Iran-Iraq war ended. Because this site did not exist at the time of the attacks on the *Sungari* and the *Sea Isle City*, it could not have been the source of those attacks.

The HY-2 missile cannot execute the sharp turn asserted by Iran

5.31. Moreover, even if such a site had existed, an HY-2 missile is incapable of executing the sort of sharp turn postulated by Iran. In support of its theory, Iran produced a report by Jean-François Briand stating that an HY-2 missile could be programmed to fly such a dog-leg course. Mr. Briand's analysis is flawed. Only modern missiles, not the older HY-2, can be programmed to make the sharp, dog-leg turn Mr. Briand postulated.

5.32. The properties, and limitations, of the HY-2's guidance system are explained in the statement of Mark Pitt, the Australian Defence Intelligence's Organization's senior missile analyst. We will now show you a graphic simulation, tab 47, based on Exhibit 209 of the performance of the HY-2 missile and its guidance system. Upon launch, the HY-2's guidance system directs the missile to fly in a straight line until a timer activates the missile's seeker, which then begins to search for targets. Once activated, the seeker looks for targets by using a radar beam to scan an area 12° to the right and left of the seeker's centre and up to 17 km ahead of the missile. The seeker locks onto the first large target it finds, ignoring smaller ones, and directs the missile on a course to hit that target.

5.33. Mr. Pitt's statement also reviews the analysis offered by Mr. Briand that the missiles that hit the *Sungari* and the *Sea Isle City* could not have followed a dogleg course and comes to a

clear conclusion: “The HY-2G is not capable of following the course suggested by Monsieur Briand.” Mr. Briand’s report includes a map that indicates the course as shown by the dotted line that he asserts the missile could have followed. The following simulation using Mr. Briand’s map, tab 48, will illustrate Mr. Pitt’s analysis that the missile could not execute the sharp turn early in flight. As Mr. Pitt explained the missile would only change course because its seeker had been activated, plus or minus 12° and locked on to a target which the seeker had located. Such a target had to be within 17 km of the missile, because that is the maximum range of the missile’s seeker. The *Sungari* and the *Sea Isle City* were struck at locations well beyond the point where Mr. Briand asserted that the missiles turned. This would make it impossible for the missiles to strike the two oil tankers.

5.34. Because of the limitations of the HY-2’s guidance system, the missiles that hit the *Sungari* and the *Sea Isle City* could only have been fired from territory controlled by Iran. HY-2 missiles from Iraqi controlled territory could not have followed the course reported by Kuwaiti military personnel on Bubiyan, Faylakah, and Awhah Islands on the way to their targets near the Al-Ahmadi Sea Island terminal.

Conclusion

5.35. Mr. President, in conclusion, from the evidence the United States has provided the Court, there can be *no* doubt that Iran was responsible for the missile attacks on the *Sungari* and the *Sea Isle City*. Let me summarize the key points that drive this conclusion.

5.36. First, the missiles were fired from territory controlled by Iran. This is established by the eyewitness accounts of the Kuwaiti military personnel who saw the flight of these missiles, just as they had witnessed the launching and flight of Iranian missiles from the Faw area on at least five previous occasions. This is also established by the limitations of the HY-2 missile’s guidance system, which rules out the possibility that the missiles could have been fired from other than Iranian controlled territory.

5.37. Second, Iran had HY-2 missiles and deployed them in the Faw area. Iran acknowledges that it possessed HY-2 missiles. While it claims not to have deployed them in the

Faw area, its assertions are definitively disproved by United States satellite imagery. The imagery showed HY-2 missiles and related equipment at locations controlled by Iran in the Faw area.

5.38. Third, Iran controlled at least four HY-2 missile launching sites in the Faw area from which it was capable of launching the missiles that struck the *Sungari* and the *Sea Isle City*. Iran acknowledges possession of at least three of these sites. While Iran once claimed these sites could not be used because the roads needed to access them were damaged. This claim was again definitively disproved by United States satellite imagery showing vehicle traffic at one of the sites.

5.39. Iraq did not have missile launching sites in the Faw area. Iran has been unable to produce any independent report concluding that Iraq, or indeed anyone other than Iran, was responsible for these attacks. By contrast, we have shown that a number of authoritative maritime information sources concluded that Iran was responsible for them.

5.40. After failing five times in January and September 1987 to strike ships with HY-2 missiles, Iran's successful attacks on the *Sungari* and the *Sea Isle City* on consecutive days represented a significant escalatory development. Coming on the heels of Iran's campaign of mine attacks against United States and other neutral shipping transiting the Gulf, these missile attacks gave the United States and other members of the international community cause for even greater concern. These attacks demonstrated Iran's unabated determination to continue attacking shipping. They also made clear that Iran had multiple means at its disposal to launch further attacks. By targeting ships engaged in oil trade with Kuwait's Al-Ahmadi Sea Island terminal, these attacks further confirmed Iran's intention to disrupt the free flow of oil through the Gulf, thus threatening the economic security of countries around the world. These attacks also added to the mounting toll of damage, measured both in lives and in dollars, that Iran was inflicting on ships and their crews.

5.41. Mr. President, this concludes my presentation. I ask that you now call again on Mr. Taft, who will make a few closing remarks.

The PRESIDENT: Thank you, Mr. Moore. I now give the floor to Mr. Taft.

Mr. TAFT: Thank you, Mr. President.

VI.

6.1. Mr. President, Members of the Court. At the outset of our presentation this morning I indicated that the United States would be reviewing carefully the facts that have been established in the record in this case. Today we have emphasized particularly the facts relating to Iran's attacks on neutral shipping in the Persian Gulf over the course of the three years prior to 19 October 1987. On that day, of course, as the Court knows, the United States took steps to disable the Rostam oil platform. This operation diminished somewhat Iran's ability to carry out its attacks on United States and other neutral shipping in the Gulf. It was, regrettably, not effective in persuading Iran to stop its attacks altogether.

6.2. On Monday, we will continue our review of the facts in the record, focusing on the period between October 1987 and April 1988, when the United States had to take further steps to protect itself and its essential security interests against Iran's attacks. We will also at that time review the many efforts of the United States and others, prior to resorting to the use of force in October 1987, to stop Iran's attacks by diplomatic means and defensive deployments of naval forces.

6.3. On Monday we will also address the reasons why the United States decided, once it determined that it was necessary to use force to stop Iran's attacks, to direct our efforts specifically against Iran's offshore oil platforms. This was largely because of the role these platforms played in supporting Iran's attacks, but other factors also made these targets particularly suitable, including the fact that two of them were not commercially productive and that all three could, it was hoped, be attacked without the loss of life, either American or Iranian. Another important factor in selecting these targets was the United States desire to keep these operations, which were undertaken in order to protect United States security interests, as separate as possible—geographically, militarily and politically—from the action of the Iran-Iraq war which was taking place well to the north.

6.4. But that will be on Monday. For today we have had a more limited purpose. We have intended here to put before the Court the record of Iran's conduct prior to October 1987. And that

conduct is, by any standard, appalling. Over a period of three years Iran's Air Force carried out 33 attacks on neutral commercial vessels; Iranian helicopters and gunboats conducted another 80 attacks; ten neutral ships were damaged by Iranian mines laid in shipping lanes in international waters; and, finally, two ships were hit by Iranian missiles. These attacks resulted in the loss of 57 lives. Forty-four other persons were injured; many of these were permanently disabled, including the master and a member of the crew of the American ship *Sea Isle City*, who were made permanently blind.

6.5. These attacks went on for three years before the United States, having tried everything else, finally concluded that the only way to stop Iran from launching further attacks was to use force. Iran now seeks to convince this Court that — even after three years of indiscriminate Iranian attacks — resort to force by the United States was barred by the 1955 Treaty. The Court should be alert to the implications of Iran's argument, having in mind Iran's conduct. How many more people would have to be killed? How many more injured? Can it be that the Treaty actually requires the United States to permit Iran to attack American ships and endanger American lives for as long as it likes without the United States being able to use force to prevent this? Is this still so where the United States has tried without success to stop Iran's attacks by diplomatic means and defensive military deployments? Must the attacks go on for some period more than three years before the United States can act? None of this is, of course, what the Treaty requires, as we will show in our presentations next week. The Treaty could hardly be clearer about the parties' rights to protect their essential security interests. Even if it were less clear than it is, however, the Court should shrink from interpreting the Treaty to give Iran a licence to conduct more than 100 attacks on neutral shipping over the course of three years, free from all fear of any military response. Yet, that, Mr. President, is what Iran is asking this Court to do.

6.6. Mr. President, Members of the Court, that concludes our presentation for today. I thank the Court.

The PRESIDENT: Thank you, Mr. Taft. The Court now adjourns until next Monday afternoon when the hearing resumes at 3 p.m. The Court rises.

The Court rose at 1.05 p.m.
